THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24192 OF 2005

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ORDER:

This writ petition is filed seeking a writ of certiorari calling for records relating to the order dated 21.10.2005 in C.M.A.No.20 of 2005 on the file of the Court of the II Additional District & Sessions Judge (Fast Track Court), Srikakulam, and to quash the same being contrary to the provisions of the A.P. Forest Act, 1967.

The facts of the case, in brief, are as follows:

Respondent herein is the owner of a lorry bearing Registration No.AP 30 T 5533. On 20.07.2004, the Forest Range Officer, Tekkali and Forest Section Officer, D.L. Puram intercepted the said vehicle at Polaki junction on N.H.5 road and seized the same on the ground that Casurina Stem Wood was being carried without permit. A case under Sections 29 and 44 of the A.P. Forest Act, 1967 (for short "the Act") read with Rules 3 and 4 of the A.P. Forest Produce Transit Rules, 1970 (for short "the Rules") was registered and the vehicle together with casurina stem wood was produced before the authorized officer – Divisional Forest Officer, Srikakulam. Thereafter, a show cause notice dated 27.09.2004 was issued to the respondent herein (owner of the vehicle) calling upon him to show cause as to why the vehicle involved in the forest offence should not be confiscated under Section 44(2-A) of the Act. The respondent submitted a detailed explanation dated 5.10.2004 stating that the lorry was hired by one Pappu Police, a resident of Rajarampuram on 19.07.2004 for transportation of 13 cmt of casurina stem wood on payment of hire charges of Rs.1,000/- per day. It is stated that he had no knowledge of any case registered against the vehicle and on 22.07.2004 having come to know that the vehicle was detained in the office of the Divisional Forest Officer, he made a representation dated 27.07.2004 for release of the vehicle expressing his willingness to furnish security. He also stated that he never hired the vehicle to B. Trinadha Rao, whose name was shown in the seizure report, as the owner of the seized produce. Thus, it was pleaded that he did not commit any offence nor did he authorize or abet commission of the alleged forest offence.

It appears that one Trinadha Rao, who was shown as the owner of forest

produce and M.V. Ramana, driver of the vehicle were also issued notices and they submitted separate explanations. The Divisional Forest Officer, Srikakulam, by order dated 10.10.2004 held that she was satisfied that a forest offence was committed, and accordingly, ordered confiscation of the vehicle in question along with 13 cmt of casurina stem wood under Section 44(2A) of the Act. Aggrieved by the said order, the respondent preferred a statutory appeal in C.M.A.No.20 of 2005 in the Court of II Additional District Judge (Fast Track Court), Srikakulam. In the appeal, it was contended, *inter alia*, that since the vehicle was carrying forest produce without his knowledge or consent, the impugned order of confiscation was not justified. The learned II Additional District Judge, having considered the entire material on record, held that in the absence of any material to establish connivance of the owner of the vehicle, the vehicle in question cannot be confiscated. Accordingly, the order of the Divisional Forest Officer, Srikakulam, dated 6.10.2004 was set aside to the extent of confiscation of the vehicle. The said order is under challenge in the present writ petition filed by the officials of the Forest Department.

I have heard the learned Government Pleader appearing for the petitioners and the learned counsel appearing for the respondent.

Learned Government Pleader contended that the fact that the owner of the vehicle himself had come forward for getting the offence compounded itself shows that the vehicle was deliberately used in the commission of forest offence with the knowledge of the owner. It is also contended that since the Divisional Forest Officer conducted enquiry following due process of law, and afforded reasonable opportunity to the owner of the vehicle against the proposed confiscation, there is absolutely no justifiable reason to interfere with the finding that a forest offence was committed. It is also contended that the learned Additional District Judge had no authority or jurisdiction to entertain the appeal against confiscation of the vehicle in view of the amended Act 17 of 1976.

From the material on record, it is not in dispute that the vehicle in question was seized on 20.07.2004 while transporting 13 cmt of casurina stem wood from Kambavanipeta village of Polaki Mandal to Etcherla. As seen from the ‘panchanama’ the allegation was that casurina stem wood, which is a forest produce, was being transported illegally inasmuch as the driver of the vehicle could not produce any certificate or permit to transport casurina stem wood. In pursuance

thereof, the Forest Range Officer, Tekkali submitted the seizure report dated 27.09.2004 to the Divisional Forest Officer, Srikakulam, stating that during preliminary enquiry it was suspected that casurina stem wood loaded in the lorry in question was brought from Ampalem beat, K.R. Peta Block, Kambavanipeta village. It was also alleged that casurina produce involved in the offence was felled from compartment No.100 of K.R. Peta Block of Ampalem beat of D.L. Puram Section from the sporadic natural regeneration in compartment No.100 of K.R. Peta block near Kambavanipeta village by felling down 433 casurina trees and converting them into 13 cmt of casurina stem wood. It is further stated that K.R. Peta block was notified under Section 24 of the Act, which is now under the protection of VSS members of Ampalam VSS. On the basis of the said seizure report, proceedings were initiated under Section 44 of the Act and a show cause notice dated 27.09.2004 was issued by the Divisional Forest Officer, Srikakulam calling upon the owner of the vehicle to show cause as to why the vehicle in question involved in the forest offence should not be confiscated under Section 44(2-A) of the Act, on the ground that the vehicle was involved in a case registered under Rules 3 and 4 of the Rules.

As noted above, the respondent/owner submitted his explanation denying the allegations and stating that he had no knowledge about the alleged forest offence, and as a matter of fact, the vehicle was hired to one Pappu Police on payment of hire charges of Rs.1,000/- per day. Though the Divisional Forest Officer ordered confiscation of the vehicle in question, observing that he was satisfied that a forest offence was committed, the order of confiscation dated 6.10.2004 shows that the Divisional Forest Officer had merely relied upon the statement of the petitioner in the seizure report that he himself sent the vehicle along with the driver and cleaner for transporting casurina stem wood which was seized by the forest officials. However, on appeal preferred under sub-section (2-E) of Section 44 of the Act, the learned Additional District Judge, did not accept the said conclusion of the Divisional Forest Officer, and held that the owner of the lorry could not be made liable in the absence of any element of connivance.

On a careful consideration of the material on record as well as the well-reasoned order passed by the learned Additional District Judge in C.M.A.No.20 of 2005, I do not find any justifiable reason to interfere with the finding of fact recorded by the learned Additional District Judge. As noted above, the Divisional Forest

Officer while directing confiscation failed to apply her mind to the relevant factors, particularly the explanation offered by the respondent/owner of the vehicle, but merely proceeded on the basis of the seizure report. In the circumstances, I am of the opinion that the learned Additional District Judge had rightly set aside the order of confiscation holding that in the absence of any clinching material to establish knowledge of the offence on the part of the owner, confiscation of the vehicle cannot be sustained.

That apart, it is relevant to note that under Section 44(2-A) of the Act, confiscation of the seized timber or forest produce together with vehicle may be ordered only where the Forest Officer is satisfied that a **forest offence** has been committed in respect thereof.

Forest offence has been defined under Section 2(e) of the Act as an offence punishable under the Act or any rule made thereunder.

In the case on hand, in the show cause notice dated 27.09.2004 it was alleged that a case was registered against the vehicle in question for an offence punishable under Rules 3 and 4 of the Rules.

Under Rule 3 of the Rules, no forest produce shall be moved into or from or within the State, unless such produce is accompanied by a permit therefor, issued under Rule 5 and produced for check immediately on demand.

Rule 4 prohibits movement of timber exceeding 25 cms in girt at its thickest part and one meter in length, except timber sawn into sizes, unless such timber bears a distinguishable Government transit mark of such description as mentioned in the permit authorizing the transit thereof accompanying the said timber.

The allegation in the case on hand is that the vehicle in question was transporting casurina stem wood without accompanied by permit as required under Rules 3 and 4 of the Rules.

However, the learned counsel for the respondent contended that the said rules are not applicable to casurina stem wood since it is an exempted class of timber under Rule 16 of the Rules. Thus the learned counsel submits that even assuming that the driver of the vehicle in question failed to produce the permit for transportation of the casurina stem wood, it does not constitute a forest offence, and therefore, the vehicle in question cannot be confiscated.

Rule 16 of the Rules runs as under:

> "These rules shall not apply to red-sanders and sandal wood and such classes of timber firewood and other forest produce and in such areas as are specified in Schedule II and III."

Item (iii) of column (4) of Schedule II makes it clear that Casurina, Sarugudu, Sarvi, Saru, are one of the classes of timber which are exempted from the applicability of the rules in all Revenue Districts in the State. Thus, it is clear that even assuming that casurina stem wood was being transported in the vehicle in question without possessing permit as required under Rules 3 and 4 of the Rules, it cannot be held to be a forest offence within the meaning of Section 2(e) of the Act. Once it is not a forest offence, confiscation under Section 44 of the Act is impermissible. Since admittedly, the Divisional Forest Officer failed to take into consideration the said aspect, I am of the opinion that the order of confiscation of the vehicle in question was erroneous on that ground also.

The contention of the learned Government Pleader appearing for the petitioners that the learned Additional District Judge has no jurisdiction to entertain the appeal is also untenable, since sub-section (2-E) of Section 44 of the Act, which was inserted by A.P. Act 17 of 1976, provides that any person aggrieved by an order passed under sub-section (2-A) of Section 44, may appeal to the District Court having jurisdiction over the area in which the property has been seized. Hence, the appeal in the District Court was rightly entertained and decided by the learned Additional District Judge.

For the aforesaid reasons, the Judgment of the learned II Additional District Judge in C.M.A.No.20 of 2005 dated 21.10.2005 setting aside the confiscation ordered by the Divisional Forest Officer, Srikakulam, does not suffer from any infirmity warranting interference by this Court. Accordingly, the Writ Petition is dismissed. No costs.

(G. ROHINI, J.)

April 10, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24192 OF 2005

10th April, 2006.

Between:

The Forest Range Officer, Tekkali and

two others. .. Petitioners.

And

S.K. Mastan Pyari John. .. Respondent